# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## CIVIL REVISION APPLICATION No. 347 of 1989

**For Approval and Signature:**

**HON'BLE MISS JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**VYAS & CO., & 1 - Applicant(s)**

**Versus**

**ASHOK NATWARLAL DUDHIYA & 1 - Opponent(s)**

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**Appearance :**

MR SURESH M SHAH for Petitioner No(s).: 1,2.
MR KV SHELAT for Respondent No(s).: 1 - 1.

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**CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT**

**Date : 15/07/2005**

**ORAL JUDGMENT**

Feeling aggrieved by the judgment and order dated 15th February, 1989 passed by the appellate bench, Small Causes Court, Ahmedabad in Civil Appeal No. 387 of 1981, the appellants, defendants in HRP Suit No. 271 of 1977, have

preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The respondent no. 1-plaintiff is the owner of the suit shop bearing Municipal Census No. 993/1, situated at Khadia, Ahmedabad. Under the rent note dated 15th December, 1956 [*Exh.43*], the suit shop was leased to the defendant no. 2-Aniruddh Asharam Vyas for the rent of Rs. 110/= for a period of one year. The suit shop was taken on lease by the defendant no.2 to carry on his business in the bicycles and bicycle spare parts in the name of Reliable Cycles & Motor Company and Messrs. Vyas & Company {*the defendant no.1*}. The plaintiff instituted HRP Suit NO. 271 of 1977 in the Court of Small Causes, Ahmedabad for recovery of possession of the suit shop on the grounds, *inter alia*, that the defendant nos. 1 & 2 had unlawfully sublet the suit shop to the defendant no. 3, a stranger. The suit was contested by defendant no.3 vide written statement Exh.30. He denied that he was the sub-tenant in the suit shop. He alleged that the suit shop was transferred to him by the defendants nos. 1 & 2 and the plaintiff had accepted the defendant no. 3 as his tenant. The defendants no. 1 & 2 contested the suit vide written statement Exh. 28. It was denied that the suit shop was

unlawfully sublet to defendant no. 3. It was stated that the defendant no. 3 was the trespasser in the suit shop and was not a subtenant, as alleged. The trial Court, by judgment and order dated 6th October, 1981, held that the defendants nos. 1& 2 had unlawfully sublet the suit shop to the defendant no. 3 and passed a decree for possession in favour of the plaintiff. Feeling aggrieved, the defendants no. 1 and 2 preferred Civil Appeal No. 387 of 1981 before the appellate Bench, Small Causes Court, Ahmedabad. The appellate bench dismissed the Appeal on 15th February, 1989. Therefore, the present Revision Application.

In view of the concurrent finding recorded by both the Courts below, no interference in exercise of revisional *jurisdiction* is warranted.

Learned advocate Mr. Shelat appearing for the respondents nos. 1/1 to 1/6 has produced copy of the Death Certificate indicating that the petitioner-defendant no.2, the tenant, has passed away on 15th August, 2003. In view of the death of the tenant, and the fact that his heir and legal representatives have not come forward to prosecute the Revision Application, the Revision Application requires to be dismissed for non-prosecution.

In above view of the matter, the Revision Application is dismissed. Rule is discharged. *Interim* relief stands vacated. There shall be no order as to cost.

{Miss R.M Doshit, J.}

*Prakash**